

1  
2  
3  
4  
5  
6  
7 UNITED STATES DISTRICT COURT  
8 CENTRAL DISTRICT OF CALIFORNIA  
9 WESTERN DIVISION  
10

11 DARRELL TATUM, ) No. ED CV 11-01036-PSG (VBK)  
12 )  
13 ) Petitioner, ) ORDER SUMMARILY DISMISSING  
14 ) v. ) PETITION FOR WRIT OF HABEAS  
15 ) GARY SANDOR, ) CORPUS FOR LACK OF SUBJECT  
16 ) )  
17 ) Respondent. )  
18 )  
19 )  
20 )  
21 )  
22 )  
23 )  
24 )  
25 )  
26 )  
27 )  
28 )

17 On July 5, 2011, Darrell Tatum (hereinafter referred to as  
18 "Petitioner") filed a "Petition for Writ of Habeas Corpus by a Person  
19 in State Custody," pursuant to 28 U.S.C. §2254 in the United States  
20 District Court for the Central District of California. Petitioner was  
21 convicted by a jury in the Riverside County Superior Court in December  
22 of 1995 of carjacking, unlawful taking of a vehicle, transportation of  
23 cocaine base, flight from a peace officer with reckless driving, and  
24 resisting arrest. In February of 1996, Petitioner was sentenced to 26  
25 years in state prison. (See Petition at 2; attached pages.)  
26 Petitioner has raised the following claims in the within Petition: (1)  
27 trial counsel advised Petitioner to bifurcate the trial on the prior  
28 enhancement issues by the trial judge; (2) ineffective assistance of

1 appellate counsel; (3) the California Supreme Court granted Petition  
2 for Review and denied 10 days after en banc; (4) Petitioner filed a  
3 habeas corpus in California Supreme Court; and (5) Petitioner received  
4 a fundamentally unfair trial and a miscarriage of justice due to a  
5 breach of contract. (See Petition at 5-6.)

6 It appears from the face of the Petition that it is directed to  
7 the same 1995 Riverside County Superior Court conviction as a prior  
8 habeas petition filed by Petitioner in this Court on March 15, 1999 in  
9 Case No. ED CV 99-00281-RT (CT).<sup>1</sup> On January 24, 2000, Judgment was  
10 entered in Case No. ED CV 99-00281-RT (CT), denying the petition and  
11 dismissing the action with prejudice, pursuant to the District Judge's  
12 Order approving and adopting the Magistrate Judge's Report and  
13 Recommendation.

14 The Petition now pending is governed by the provisions of the  
15 Antiterrorism and Effective Death Penalty Act of 1996 (Pub. L. 104-  
16 132, 110 Stat. 1214)("the Act"), which became effective April 24,  
17 1996. Section 106 of the Act amended 28 U.S.C. §2244(b) to read, in  
18 pertinent part, as follows:

19 "(1) A claim presented in a second or successive habeas  
20 corpus application under section 2254 that was presented in a  
21

---

22 <sup>1</sup> The Court takes judicial notice of its own files and records  
23 and notes that on March 15, 1999, Petitioner filed a "Petition for  
24 Writ of Habeas Corpus by a Person in State Custody," which was given  
25 Case No. ED CV 99-00281-RT (CT). In this Petition, Petitioner raised  
26 the following claims: (1) unlawful vehicle taking is a lesser included  
27 offense of carjacking; (2) Petitioner's due process rights were  
28 violated by the trial court's failure to instruct the jury that  
carjacking requires more force than that necessary to take a car; (3)  
Petitioner's due process rights were violated as a result of the trial  
court instructing the jury with the December 1994 revision of CALJIC  
No. 2.90; and (4) Petitioner's due process rights were violated by  
counsel's failure to object and preserve claim on appeal. (Petition at  
6-7.)

1 prior application shall be dismissed unless--

2 (2) (A) the applicant shows that the claim relies on a new  
3 rule of constitutional law, made retroactive to cases on  
4 collateral review by the Supreme Court, that was previously  
5 unavailable; or

6 (B)(I) the factual predicate for the claim could  
7 not have been discovered previously through the exercise of  
8 due diligence; and

9 (ii) the facts underlying the claim, if proven and  
10 viewed in light of the evidence as a whole, would be  
11 sufficient to establish by clear and convincing evidence  
12 that, but for constitutional error, no reasonable factfinder  
13 would have found the applicant guilty of the underlying  
14 offense.

15 (3)(A) Before a second or successive application permitted  
16 by this section is filed in the district court, the applicant  
17 shall move in the appropriate court of appeals for an order  
18 authorizing the district court to consider the application."

19 (Emphasis added.)  
20

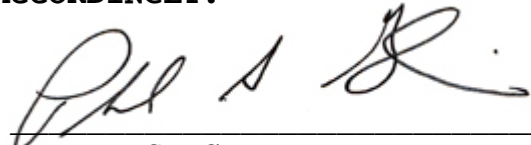
21 The Petition now pending constitutes a second and/or successive  
22 petition challenging the same conviction as Petitioner's prior habeas  
23 petitions, within the meaning of 28 U.S.C. §2244(b). Thus, it was  
24 incumbent on Petitioner under §2244(b)(3)(A) to secure an order from  
25 the Ninth Circuit authorizing the District Court to consider the  
26 Petition, prior to his filing of it in this Court. Petitioner's  
27 failure to do so deprives the Court of subject matter jurisdiction.

28 For the foregoing reasons, **IT IS ORDERED** that this action be

1 summarily dismissed pursuant to Rule 4 of the Rules Governing Section  
2 2254 Cases in the United States District Courts.

3 **LET JUDGMENT BE ENTERED ACCORDINGLY.**

4  
5 DATED: July 22, 2011

  
\_\_\_\_\_  
6 PHILIP S. GUTIERREZ  
UNITED STATES DISTRICT JUDGE

7  
8 Presented on  
9 July 18, 2011 by:

10 /s/  
11 VICTOR B. KENTON  
UNITED STATES MAGISTRATE JUDGE